



STATE OF INDIANA

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November 8, 2012

Rocky M. Shroyer
DOC 956193
5501 South 1100 West
Westville, Indiana 46391

Re: Formal Complaint 12-FC-308; Alleged Violation of the Access to Public Records Act by the Indianapolis Metropolitan Police Department

Dear Mr. Shroyer:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Metropolitan Police Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Andrea Brandes Newsom, Chief Deputy Corporation Counsel, responded on behalf of the Department. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on March 27, 2012, August 15, 2012, and September 24, 2012, you submitted a written request to the Department for a copy of the booking photograph for Michael G. Tyson. In response to your March 27, 2012 request, the Department responded in writing and acknowledged its receipt. As of October 15, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any records that are responsive to your request.

In response to your formal complaint, Ms. Brandes-Newsom advised the Department received your request on April 16, 2012. The Department acknowledged the receipt of your request in writing. The Department has been able to locate only one booking photograph that was responsive to your request and a copy was mailed to you on October 18, 2012. The Department regrets any inconvenience which may have been caused due to the lengthy period of time to fulfill the request.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine

duties of public officials and employees, whose duty it is to provide the information.” See I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. See I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. See I.C. § 5-14-3-3(a).

A request for records may be oral or written. See I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Here, the Department received your written request for records on April 16, 2012, to which the Department timely acknowledged such receipt in writing. Accordingly, it is my opinion that the Department complied with the requirements of section 9(b) in response to your request.

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. See I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered to be considered in determining if the requirements of section 3(a) under the APRA have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. See I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. See I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. See I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. See *Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. See *Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency’s failure to provide “instant access” to the requested records constitutes a denial of access. See *Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

After submission of your original request to the Department, approximately six months followed before you received any records that were responsive. Ultimately, the Department produced one booking photograph that was responsive to your request. The Department has stated that it regrets any inconvenience which may have been caused due to the lengthy period of time that was necessary to fulfill the request. Although I am

mindful of the additional duties and responsibilities required of the Department and the large volume of record requests that are submitted to the agency, it is my opinion that the Department has failed to meet its burden to demonstrate that it has complied with the requirements of I.C. § 5-14-3-3(b) in providing the records that were responsive to your request in a reasonable period of time. As all records have now been provided, I trust that this is in satisfaction of your formal complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department has failed to meet its burden to demonstrate that it complied with the requirements of I.C. § 5-14-3-3(b) in providing records that were responsive to your request in a reasonable period of time. As to all other issues, it is my opinion that the Department complied with the requirements of the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Andrea Brandes-Newsom